

# **BUSINESS LAW SECTION**

## **CORPORATIONS COMMITTEE**

### **COMMITTEE MEETING MINUTES FOR APRIL 5, 2002**

**Friday, April 5, 2002  
By Video Conference**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held by video conference on April 5, 2002. Attendance was as follows:

#### **MEMBERS PRESENT:**

Keith Paul Bishop  
David S. Caplan  
John C. Carpenter  
Nelson D. Crandall  
Bruce Dravis  
James K. Dyer, Jr.  
Teri Shugart Erickson  
James F. Fotenos

Steven K. Hazen  
Mark T. Hiraide  
Carol K. Lucas  
Brian D. McAllister  
Cynthia Ribas  
James R. Walther  
Neil J. Wertlieb  
Nancy Wojtas

#### **MEMBERS ABSENT:**

Timothy J. Fitzpatrick  
Eileen Lyon  
B. Keith Martin  
Ethna M. Piazza  
David M. Pike  
Randall B. Schai  
Daniel J. Weiser

#### **LIAISONS PRESENT:**

Suzanne S. Graeser, Executive Committee  
Timothy G. Hoxie, Executive Committee

#### **GUESTS PRESENT:**

R. Bradbury Clark, Nonprofit and Unincorporated Organizations Committee

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda, which are not described in these minutes. In David Pike's absence, Jim Dyer agreed to take the minutes of the meeting.

#### **I. ADMINISTRATIVE MATTERS.**

**A. Opening Remarks and Announcements.** The meeting was called to order by Co-Chair Neil Wertlieb at approximately 9:30 a.m. Mr. Wertlieb opened the meeting by thanking Bruce Dravis for his efforts in planning and coordinating the March meeting of the Committee in Sacramento. Mr. Wertlieb reported that he and David Caplan attended a recent retreat at Bodega Bay with the Executive Committee and the chairpersons and certain other members of the other standing committees of the Business Law Section. Mr. Wertlieb provided an overview of the highlights of the retreat, including a discussion of the constituency program of the Business Law Section and its database, the websites of the standing committees, the recruiting efforts of the standing committees, and the upcoming Spring Meeting of the Business Law Section scheduled for May 17-19 in San Diego. Mr. Wertlieb noted that David Caplan was commended for his work on the Committee's website. Mr. Wertlieb also discussed the importance of attendance at the upcoming BLS Spring Meeting. Co-Chair Walther noted that he had received only one volunteer (Ethna Piazza) for the Secretary of State Automation task force that was discussed at the March meeting of the Committee. Bruce Dravis volunteered to also work on the task force.

**B. Minutes of March 1, 2002 Meeting.** Steve Hazen and David Caplan had a few comments on the draft minutes of the meeting of the Committee held on March 1, 2002. The minutes of the March 1, 2002 meeting previously circulated to the members, with minor revisions to address the comments made during this meeting, were approved by the Committee.

## **II. LIAISONS' REPORTS AND DISCUSSION.**

**A. Department of Corporations.** Co-Chair Wertlieb reported that, although he could not attend the meeting, Tim Le Bas, Assistant Commissioner of the Department of Corporations, provided an update from the Department of Corporations by email to the Co-Chairs. In the update, Mr. Le Bas reported that (i) the Department of Corporations adopted emergency regulations effective March 18, 2002, relating to long and short form applications for licensure under the California Finance Lenders Law, and (ii) the Department of Corporations adopted regulation Section 260.204.9, effective March 27, 2002, which provides an exemption for certain investment advisers with fewer than 15 clients from the licensing requirements under California Corporations Code Section 25230. In addition, Mr. Le Bas raised questions concerning the following four areas: (i) Department of Corporations' proposed language to SB 399 (corporate conversions), (ii) issues raised concerning AB 1472 (supermajority voting requirements), (iii) bridge loans from venture capitalists, and (iv) suggested responses to Enron. A lengthy discussion followed. As a result of the discussions, the Committee concluded that it was premature to adopt a position with respect to whether legislative or regulatory action is necessary or appropriate in light of Enron, and decided to add an item to the Agenda to monitor developments in this regard. In addition, Neil Wertlieb and Keith Bishop will contact Tim Le Bas before the next meeting to discuss the Department of Corporations' position in the wake of Enron.

**B. BLS Executive Committee.** Tim Hoxie and Suzanne Graeser delivered a status report from the Executive Committee of the Business Law Section. Mr. Hoxie reported that the Business Law Section had hired a new publisher for the Business Law News and that the Education Committee will serve as an editorial board of the Business Law News. In addition, Mr. Hoxie provided an overview of the manner in which the Business Law Section funds its operations, and discussed the ongoing membership drive. Ms. Graeser mentioned that it appears that many law firms have reduced their support for economic reasons. Mr. Hoxie and Ms. Graeser strongly encouraged everyone to attend the upcoming Spring Meeting of the Business Law Section.

**C. Partnerships and LLC Committee.** Steve Hazen reported on recent events concerning the Partnerships and LLC Committee. Mr. Hazen reported that the LLC Guide would soon be distributed to the members of the Committee. Mr. Hazen also reported on the status of AB 601, which would modify Section 16601 of the California Business and Professions Code to be entity neutral. Co-Chair Wertlieb reported that he, Co-Chair Walther and Keith Bishop were recently requested to review comments that were received from the Judiciary Committee. Mr. Hazen also discussed the efforts of the National Conference of Commissioners on Uniform State Laws ("NCCSL") with respect to proposed revisions to the Revised Uniform Partnership Act. Mr. Hazen also briefly discussed the status of "junction box" legislation.

**D. UCC Committee.** Jim Dyer reported that he has not received the most recent materials of the UCC Committee due to his recent change of law firms. A cumulative update will be provided at the next meeting of the Committee.

**E. Health Law.** Carol Lucas provided an update from the Health Law Committee. Ms. Lucas reported that the Health Law Committee will have a program at the BLS Spring Meeting relating to the fundamentals of health care law for general business lawyers. Ms. Lucas also reported that the Health Law Committee was sponsoring a legislative proposal to amend the list of professions under Section 13401.5 to include licensed dentists.

**F. Nonprofit and Unincorporated Organizations Committee.** Brad Clark stated that the focus of the Nonprofit and Unincorporated Organizations Committee is on the unincorporated associations law. Mr. Clark also mentioned that the Nonprofit and Unincorporated Organizations

Committee is planning a program at the BLS Spring Meeting with the Taxation Section.

### III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS.

**A. Report by Legislative Liaison.** Jim Fotenos reported on the current status of pending legislation, including AB 2969 (Florez), SB 1472 (Romero), AB 2187 (Lowenthal), AB 601 (Leach), AB 1875 (Nakano and Correa), AB 2355 (Campbell), and SB 399 (Ackerman). David Caplan mentioned that SB 1473 (Machado), which previously related to notices to shareholders under the California Corporations Code, has been completely redrafted, and now relates to expanded powers of the Commissioner of the Department of Corporations. Jim Fotenos will review revised SB 1473 and report to the Committee at the next meeting.

**B. SB 399 - Corporate Conversions.** Co-Chair Wertlieb reported that there were no significant developments concerning SB 399 to report. The status of the pending legislation was discussed by the Committee in light of the legislative time frames of the current session.

**C. Section 25102(o) Emergency Regulations Comments.** Keith Bishop reported that comments to the Section 25102(o) emergency regulations are due on April 24, 2002. The issues relating to 25102(o) were discussed at great length. Mr. Bishop provided a historical overview of 25102(o), reminded the Committee that 34 states have blanket exemptions for stock options, and discussed a few examples of problems encountered by companies as a result of 25102(o). The Committee explored several approaches to responding to the Commissioner's request for comments. The Committee decided to prepare a response using previous letters written to the Department of Corporations concerning 25102(o) by Keith Bishop, Suzanne Graeser and Bob Stansell, and adding real world examples of issues encountered as a result of 25102(o). Co-Chair Walther will work with Keith Bishop to prepare a draft of proposed comments for Executive Committee approval.

**D. Section 710 Sunset on Supermajority Approvals.** Neil Wertlieb reported that the Department of Corporations recently raised certain issues concerning SB 1472 (Romero). Mr. Wertlieb will discuss this matter with David Pike and report to the Committee at the next meeting.

### IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

**A. Secretary of State Fax Filings.** Bruce Dravis reported that he had received comments regarding proposed legislation previously circulated to the Committee. The proposed legislation has been revised and sent for comment to Cathy Mitchell, Chief, Business Programs Division, California Secretary of State. Mr. Dravis briefly discussed the interplay between the proposed legislation and E-sign and UETA.

**B. 25118(b) Definition of Aggregate Evidences of Indebtedness.** In Dan Weiser's absence, a memorandum on the subject of 25118(b) from Dan Weiser, dated April 1, 2002, was distributed to the members of the Committee.

**C. Amend Finance Lenders Law.** Keith Bishop reported that the draft of the Committee's legislative proposal concerning finance lenders had been revised to respond to issues raised by Tim Le Bas. The proposal was discussed in detail by the Committee and certain revisions were proposed. Mr. Bishop will revise the proposal for consideration by the Committee at its next meeting.

### V. WEBSITE PROJECTS

**A. Website Update.** David Caplan reported that the website of the State Bar of California, including its standing committees, will be moved to the State of California's website. Mr. Caplan also mentioned that he is not receiving minutes of the Committee meetings in a form that may be posted to the website. Neil Wertlieb and Jim Walther will contact David Pike to ensure that the final minutes are transferred to Mr. Caplan for posting.

**B. Recent Developments Page.** Nancy Wojtas reported on recent developments with the Securities and Exchange Commission. Ms. Wojtas discussed the recent action against Waste Management, Inc., and noted that the Commission would be meeting soon to discuss proposed revisions to Form 8-K.

## **VI. OTHER PROJECTS**

**A. Opinions Project.** Nelson Crandall reported that the Opinions Committee is now in place, and provided a brief status report of this Committee's opinions project. Mr. Crandall emphasized that the creation of the Opinions Committee should not have a significant impact on the scope of this Committee's opinions project. Mr. Crandall reminded Committee members that first drafts should be circulated among the sub-committees in the near future. Mr. Crandall also discussed a recent decision from Vermont concerning attorney liability in connection with the rendering of a legal opinion.

**B. Educational Activities.** Bruce Dravis reported that the Committee would be sponsoring a program at the upcoming Spring Meeting of the Business Law Section relating to a comparison of California and Delaware corporate laws and the ramifications of California Corporations Code Section 2115. Mr. Dravis also discussed the possibility of adapting the program materials for an article in the Business Law News.

**C. Guide to Organizing California Corporations.** Neil Wertlieb reported that Eileen Lyon provided an update by email stating that the many portions of the Guide have been drafted and that drafts would be circulated next month to the members of the Committee for review.

**D. Blue Sky Guide.** David Caplan reported that the Blue Sky Guide is being revised to address recent developments concerning stock options. Keith Bishop reported that he has completed his review of the Blue Sky Guide.

**E. Investment Advisor Exemption.** Keith Bishop reported that the investment advisor regulations were adopted by the California Department of Corporations. Consequently, this item will be removed from the Agenda of future meetings.

**F. "Junction Box" Initiative.** Steve Hazen reported that NCCUSL is not the only group analyzing "junction box" legislation on a national level. There are at least four other groups within the American Bar Association that are considering such legislation. Mr. Hazen will contact Chip Lion to inquire if he would be willing to make a presentation to the Committee concerning junction box legislation. Neil Wertlieb mentioned that the Executive Committee wants to closely monitor developments relating to this matter. Jim Fotenos volunteered to continue to monitor such developments and report to the Committee as appropriate.

**G. Criminalization of Alleged Securities Violations.** The Committee discussed the current state of criminal liability for alleged securities laws violations at the federal and state levels and related issues.

**H. Short-Form Corporate Dissolution Statute Proposal.** AB 1875 was briefly discussed. Dave Caplan mentioned that the bill had been recently amended.

**I. Coordination with Secretary of State on Technology Issues.** Co-Chair Walther requested that members contact him if they would like to participate in the Secretary of State technology project.

## **VII. NEW BUSINESS**

**A. Practice Issues.** At the request of Committee members, a new agenda item has been added relating to practice issues encountered by corporate lawyers. The Committee discussed a couple of practice issues raised by the members.

The meeting was adjourned at approximately 12:30 p.m.

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James K. Dyer, Jr.

**Corporation Committee Meeting Minutes**

